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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 YVETTE WEINSTEIN, CHAPTER 7
11 TRUSTEE OF THE GEORGE S.
12 AQUINO BANKRUPTCY ESTATE,

13 Plaintiff,
14 v.
15 DIRECT ACCESS, LLC, *et al.*,
16 Defendants.

Case No. 2:10-CV-00822-KJD-LRL

ORDER

17 Presently before the Court is Plaintiff's Motion to Remand (#14). Defendants Countrywide
18 Home Loans, Inc. and BAC Home Loans Servicing, LP ("Defendants") filed a response in opposition
19 (#17) to which Plaintiff replied (#23).

20 **I. Background and Procedural History**

21 Plaintiff filed her complaint on February 25, 2010 in Nevada state court. She asserted claims
22 for breach of contract, breach of the covenant of good faith and fair dealing, violations of Nevada
23 statute, fraud, misrepresentation, conversion and civil conspiracy. Defendants were served on May
24 11, 2010. Defendants filed a timely notice of and petition for removal on June 1, 2010. Defendants
25 based jurisdiction upon federal questions they assert that Plaintiff had raised in her complaint under
26 the Truth in Lending Act ("TILA"), the Real Estate Settlement Procedures Act ("RESPA"), and the

1 Fair Credit Reporting Act (“FCRA”). Now Plaintiff has timely filed her motion to remand asserting
2 that her well plead complaint only raises state law claims and does not raise substantial issues of
3 federal law.

4 II. Motion to Remand

5 Federal courts have removal jurisdiction only if there is original jurisdiction over a suit. See
6 28 U.S.C. §1441(a); Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987) (“Only state-court
7 actions that originally could have been filed in federal court may be removed to federal court by the
8 defendant”). Furthermore, there is a strong presumption against removal jurisdiction which means
9 that the defendant always has the burden of establishing that removal is proper. Gaus v. Miles, Inc.,
10 980 F.2d 564, 566 (9th Cir. 1992). In effect, a party seeking removal must show that plaintiff has
11 either alleged a federal claim, a state claim that requires a resolution of a substantial issue of federal
12 law, or a state claim completely pre-empted by federal statute. See American Well Works Co. v.
13 Layne & Bowler Co., 241 U.S. 257, 260 (1916); Franchise Tax Bd. v. Construction Laborers
14 Vacation Trust, 463 U.S. 1, 9 (1983); Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 65 (1987).

15 The presence of federal-question jurisdiction is governed by the “well-pleaded complaint
16 rule” which provides that federal jurisdiction exists only when a federal question is presented on the
17 face of the plaintiff’s properly pleaded complaint. Caterpillar, 482 U.S. at 392. The plaintiff may
18 avoid federal jurisdiction by exclusive reliance on state law. Id. Defendants essentially argue that
19 Plaintiff omitted necessary federal claims to avoid jurisdiction.

20 However, though Plaintiff asserts that defendants misrepresented information in federally
21 required forms under TILA and RESPA, the claims arise under state law. Plaintiff is not asserting
22 that violations of TILA, RESPA, and the FCRA gave rise to the state law claims. Plaintiff merely
23 asserts that information that was provided as a requirement by those laws were misrepresentations.
24 Even if Plaintiff had claims under those federal statutes, Plaintiff has failed or chosen not to raise
25 them here. Defendants have failed to meet their burden in establishing that Plaintiff has alleged
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1 federal claims or state law claims that require resolution of substantial issues of federal law. Thus,
2 the Court grants the motion to remand.

3 III. Conclusion

4 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand (#14) is
5 **GRANTED**.

6 DATED this 7th day of October 2010.

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Kent J. Dawson
United States District Judge